



RSC Memorandum: **A Dozen Reforms for Congress to Get Serious on China**

Communist China poses the United States' greatest economic, defense, and political challenge of this generation. Yet Senate Majority Leader Schumer's rapidly evolving "China package," S. 1260 – the United States Innovation and Competition Act (USICA), is woefully inadequate in countering the multifaceted threat posed by China. The USICA now contains the reported version of the Endless Frontier Act as well several pieces of legislation developed in other Senate committees. The Senate is expended to continue consideration of the USICA and amendments thereto through at least next week. Despite presently being over 1,400 pages long with an estimated price tag at the moment of around \$200 billion, the USICA lacks real teeth in implementing policies that will actually meet the China challenge. Indeed, the core component of the package, the Endless Frontier Act, could actually be counterproductive to efforts to counter Communist China, as pointed out in a recent RSC Memorandum, which can be found [here](#).

Rather than meeting the China challenge, the USICA would allow a once in a generation opportunity to craft meaningful bipartisan legislation to counter China to slip away. Although the USICA contains a number of positive elements, Communist Party Chairman Xi Jinping, and the CCP Politburo in Beijing will have dodged a bullet and will be breathing a sigh of relief. Over 100 sections of the USICA are findings, senses of Congress, statements of policy, strategies, and reporting requirements, which are mostly symbolic.

Conversely, last Congress, the RSC's [National Security Task Force](#) and the House Republican China [Task Force](#) laid out hundreds of recommendations for countering the threat of Communist China. RSC members have introduced dozens of pieces of legislation in recent months that would have a real and significant impact in countering the CCP, most of which would not involve spending taxpayer money.

Congress must take the leading role in ensuring the success of any strategy to counter Communist China. The China challenge is not the realm of foreign policy alone but is multifaceted and affects almost every aspect of American life, including our national defense, educational system, intellectual property, industrial capacity, and as the COVID-19 pandemic has shown, our public health. President Donald Trump turned the U.S. foreign policy consensus for decades on China on its head, abandoning the notion that economic integration with China would alone lead to better relations and moderate China's behavior. Still, executive action, while necessary, is not sufficient. For example, in the past few

months, two federal courts have struck down two separate sanctions designations made by the Trump administration of Chinese Communist Military Companies (CCMCs).¹²

The USICA does contain a few meaningful provisions. New mandatory sanctions, such as those on entities in China involved in the theft of intellectual property (IP), are a step in the right direction, as are new sanctions connected to China's use of forced labor of Uyghur Muslims. The USICA also makes upgrades to the foreign investment review authorities of the Committee on Foreign Investment in the United States (CFIUS) and reduces the threshold for college and university disclosures of foreign gifts and contracts from \$250,000 to \$50,000 (based upon language introduced over multiple Congresses by Senator Rubio and RSC National Security Task Force Chairman Joe Wilson). Finally, the USICA includes modest, yet still inadequate, improvements to the Endless Frontier Act by redirecting some funding from the National Science Foundation to the Department of Energy's Labs and putting in place new guardrails to protect American IP.

The following discussion contains a dozen reforms that would enhance and add teeth to USICA so that it could better serve its proffered purpose of countering Communist China:

1) Enact a comprehensive package of proposals to protect American IP

While the latest iteration of the USICA adds some meaningful IP protection, the bill remains far too weak in this respect and still do not sufficiently prevent China from benefitting from U.S. taxpayer funded IP. Earlier this month, the RSC [released](#) a memorandum on maintaining U.S. tech supremacy through IP innovation which included numerous solutions for protecting American IP. The bill still does not require grantees to sever their ties with entities on the Entity List administered by the Bureau of Industry and Security, entities under [non-SDN](#) sanctions, or even Chinese Communist Military Companies. In addition, Derek Scissors of the American Enterprise Institute, has [written](#) on reforms that could be made to protect IP in the Endless Frontier Act, including barring entities subject to the jurisdiction of countries—such as China—that permit trade secret theft and cyberattacks from obtaining research funding and putting into law new export controls to ensure the protection of technology developed through research funded by the Endless Frontier Act. Also, as the RSC memo points out, in order to truly counter China in the IP arena, the United States must additionally “undertake reforms of domestic IP laws to ensure that our nation fosters technological innovation better than any other, including China.” More information on this topic is contained in the RSC [memo](#).

2) Block Biden's tax hike plan that would kill American innovation, jobs, and economic progress

President Biden has proposed increasing the top corporate tax rate from 21 percent to 28 percent, higher and more punitive than that of Communist China (25 percent). This would make our corporate tax rate one of the highest in the world. He has also proposed creating a minimum book tax that would nearly double business taxes and increasing taxes on the foreign earnings of U.S. companies in a way that will drive more companies and jobs overseas. Moreover, he has proposed increasing taxes on individuals and small businesses in a way that will sap investment and the innovation and jobs it brings. In terms of countering China, this is a recipe for disaster.

¹ Dan Strumpf. “Xiaomi Wins Court Ruling Halting U.S. Investment Ban.” Wall Street Journal, 13 Mar. 2021. [www.wsj.com, https://www.wsj.com/articles/xiaomi-wins-court-ruling-halting-u-s-investment-ban-11615604756](https://www.wsj.com/articles/xiaomi-wins-court-ruling-halting-u-s-investment-ban-11615604756).

² “Preliminary Injunctions Delay Implementation of Commerce Department Orders Targeting TikTok and WeChat.” Accessed May 20, 2021. <https://www.omm.com/resources/alerts-and-publications/alerts/preliminary-injunctions-delay-commerce-department-orders-targeting-tiktok-and-wechat/>.

3) Fix the broken definition of Chinese Communist Military Companies in Sec. 1237 of the 1999 NDAA after federal courts struck down two different designations made by the Trump administration.

The definition of Chinese Communist Military Companies needs to be updated. Federal courts have struck down President Trump's designations of two companies Xiaomi and Luoking for not meeting the definition laid out by the law. Specifically, courts have construed that even if a senior CCP official runs a company, that is not enough to make it "Communist." Also, courts have ruled that even if a company is affiliated with the Chinese military and defense establishment and investing in sectors connected to that establishment that is not enough to make them "military companies." This is despite China having a strategy of "civil military fusion" where seemingly private companies are involved in investing in key sectors such as AI and 5G to help develop China's military..³ The definition should be updated to clarify that a company is "Communist" if it is led by a senior official of the CCP including any former delegate of the CCP's National People's Congress. It should also clarify that private Chinese companies that engage in significant investment in sectors involved in China's strategy of civil-military fusion, as described in the Trump administration's *National Defense Strategy*, are military companies. RSC Chairman Jim Banks has introduced legislation this Congress, the Holding Chinese Military Companies Accountable Act, which would do just that.

4) Fix the Berman Amendments to the International Emergency Economic Powers Act of 1976 (IEEPA) to authorize the imposition of sanctions on mobile personal communications applications or software programs which surreptitiously transmit user data to China or to the CCP.

The Berman Amendments to IEEPA (found in [50 U.S.C. § 1702\(b\)\(1\) and \(3\)](#)) limited the Act's applicability to the informational services. As federal courts have noted, "IEEPA's grant of authority does not include the 'authority to regulate or prohibit, directly or indirectly . . . any . . . personal communication, which does not involve a transfer of anything of value.'"⁴ These amendments created for the important purpose of protecting the free exchange of information and ideas, and ensuring that information itself was free of sanctions, were enacted in an era before the modern internet, smartphones, and mobile applications. At that time, Congress could not have anticipated that mobile applications such as TikTok or WeChat could threaten the national security of the U.S. by sharing sensitive user data of American citizens to China. These laws have created a barrier to protecting the sensitive user data of American citizens from misappropriation and were cited by federal courts in issuing a preliminary injunction suspending President Trump's Executive Order dealing with the threat of TikTok.⁵ These laws should be updated to extend IEEPA's scope to protect American citizens from the threat of mobile applications or software programs involved in misappropriating user data.

5) Impose mandatory sanctions on the United Front Work Department of the CCP

The United Front Work Department of the CCP is the party organ specifically responsible for "united front work" or political warfare and propaganda efforts supporting the Communist ideology and undermining democracy. The U.S.-China Economic and Security Review Commission has noted that "China uses what it calls United Front Work Department of the Chinese Communist Party to co-opt and neutralize sources of potential opposition to the policies and authority of its ruling Chinese Communist Party (CCP)." The UFWD is active in the U.S. through a number of front organizations including the Chinese Students and Scholars Association (CSSA) and other nonprofit organizations

³ "Xiaomi Corp. v. Dep't of Def., Civil Action No.: 21-280 (RC) Accessed May 20, 2021. <https://casetext.com/case/xiaomi-corp-v-dept-of-def>.

⁴ "Another Court Loss for President's TikTok Ban, Questions Loom About the Future." JD Supra. Accessed May 20, 2021. <https://www.jdsupra.com/legalnews/another-court-loss-for-president-s-42365/>.

⁵ Supra Note 2.

that actively work to co-opt opposition to the CCP. Recognizing the threat of the UFWD, on December 4, 2020, former Secretary of State Mike Pompeo imposed visa restrictions on individuals active in UFWD activities, and, on January 15, 2021, the Trump administration's Department of the Treasury imposed sanctions on You Quan, the head of the UFWD, placing him on the list of Specially Designated Nationals (SDN) and Blocked Persons. However, the UFWD itself has still not been sanctioned, which still gives this organization access to the U.S. financial system. RSC Chairman Jim Banks has introduced the Countering Chinese Propaganda Act, which would sanction the UFWD. Senator Tom Cotton has introduced the companion in the Senate.

6) Require think tanks and other nonprofit organizations to publicly disclose foreign government or foreign political party donations of over \$50,000 in aggregate per calendar year.

Nadege Rolland, a senior fellow at the National Bureau of Asian Research, recently noted how think tanks are an essential aspect of the CCP's strategy to shape the policy discourse on China.⁶ A January 2020 report by the Foreign Influence Transparency Initiative notes that China has donated to the Center for Strategic and International Studies, the Inter-American Dialogue, and the World Resources Institute.⁷ According to the U.S.-China Security and Economic Review Commission, the John Hopkins University's School of Advanced International Studies, the Brookings Institution, Atlantic Council, Center for American Progress, EastWest Institute, Carter Center, and the Carnegie Endowment for International Peace, have all received funding from China or from entities connected to the CCP.⁸ Rep. Lance Gooden's Think Tank and Nonprofit Foreign Influence Disclosure Act would require nonprofit organizations which receive over \$50,000 in aggregate contributions from a foreign government or foreign political party to publicly disclose such contributions, which would be searchable in a database on a website run by the federal government. Such legislation or limiting disclosure requirements to Communist countries or foreign adversaries such as China and the CCP would go a long way to exposing the CCP's malign influence.

7) Prohibit former members of Congress for lobbying for China or the CCP

China and the CCP are the foremost adversaries that the U.S. currently faces, yet both currently employ the expertise of over a dozen former members of Congress to lobby on their behalf.⁹ Former RSC Chairman Mike Johnson has introduced the No Communist Countries Participating in Lobbying Act, which would prohibit former members of Congress from lobbying on behalf of a Communist country as defined by the Foreign Assistance Act, including China.

8) Require the national security agencies to maintain a sensitive research projects list.

Law enforcement and intelligence agencies have openly warned that foreign actors direct students and staff to conduct espionage and have targeted sensitive research projects across the country.¹⁰ Similar to the Protect Our Universities Act, directing the national security agencies or the National Academies Science, Technology and Security Roundtable to maintain a sensitive research project list

⁶ "Sharp Power and Democratic Resilience Series | Commanding Ideas." National Endowment for Democracy. Accessed May 20, 2021. <https://www.ned.org/sharp-power-and-democratic-resilience-series-commanding-ideas/>.

⁷ Ben Freeman. "Foreign Funding of Think Tanks in America." Center for International Policy. https://static.wixstatic.com/ugd/3ba8a1_4f06e99f35d4485b801f8dbfe33b6a3f.pdf

⁸ "Chinese Communist Party Funds Washington Think Tanks." Washington Free Beacon, August 24, 2018. Accessed May 20, 2021. <https://freebeacon.com/national-security/chinese-communist-party-funds-washington-think-tanks/>.

⁹ "Meet the Former US Lawmakers Lobbying for China, Inc." Foreign Lobby, May 17, 2021. Accessed May 20, 2021. <https://www.foreignlobby.com/2021/05/17/meet-the-former-us-lawmakers-lobbying-for-china-inc/>.

¹⁰ Tal Axelrod. "US Intelligence Accuses China of Using Student Spies to Steal Secrets." The Hill. Last modified February 2, 2019. Accessed May 20, 2021. <https://thehill.com/policy/international/china/428181-us-intelligence-accuses-china-of-using-student-spies-to-steal>.

can ensure that relevant federal actors are keenly aware of what universities and labs hold the most sensitive information.

9) Clarify that the Department of Education (ED) should report any non-compliance with the new foreign gift and contract reporting requirements to the existing federal [interagency working group](#).

As explained by the Department of Education, “[Section 117 of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1011f (“Section 117”)] requires U.S. colleges and universities publicly to report foreign gifts and contracts to the U.S. Department of Education... the value of which is \$250,000 or more...and to disclose any foreign ownership or control to the Secretary of Education.” After decades of lax oversight, Former Secretary of Education Betsy DeVos enforced reporting requirements pursuant to Section 117. Still, ED is only equipped to monitor disclosure requirements of Section 117. ED cannot, however, carry out necessary national security enforcement actions to address concerning foreign contributions. Fortunately, ED began investigations into potential non-compliance, but it must lean on its federal national security partners to look further into foreign influence on particular campuses.¹¹ In order to adequately confront Communist China’s malign influence in higher education, Congress should ensure that ED conveys information, including noncompliance, garnered through Section 117 to appropriate federal national security agencies. Additionally, amid pleas from the biggest university coalitions, there is no indication that the Biden administration will continue the Trump administration’s efforts to stringently enforce Section 117.¹² Congress should codify the Trump administration’s steps.¹³

10) Prohibit higher education institutions and their employees from being funded by the CCP.

The United States Innovation and Competition Act of 2021 allows universities to partner with a Confucius Institute through a waiver and review of their contract by the National Academies. Moreover, this restriction is not even permanent. RSC Steering Committee Member Rep. Greg Steube’s Protecting Higher Education from Foreign Threats Act would completely prohibit universities and their employees from being funded by the CCP. Any failure to comply would cause an institution to lose all federal funding.

11) Lift regulations to strengthen the pharmaceutical manufacturing base as well as regulations that are stifling innovation and research and development.

The U.S. became the world leader in cutting edge technological innovation through the dynamism of the private sector and the free market economic system. Yet, as the RSC has previously pointed out in a memorandum criticizing the Endless Frontier Act piece of the China package, the Endless Frontier Act is based upon the idea of copying China’s centralized model of government-planning. Regulations which create obstacles to unleash the dynamism of the private sector in research and development and innovation should be repealed. For example, as Rep. Ronny Jackson has pointed out in H.Res. 280, deregulation would strengthen the pharmaceutical manufacturing base in the U.S. The Food and Drug Administration (FDA) should be required to identify and streamline regulatory hurdles that have stifled the United States pharmaceutical manufacturing base and that have promoted foreign supply lines and offshoring United States industry.

12) Redirect funding to national defense priorities including the GBSD and DARPA

Developing a next-generation intercontinental ballistic missile is vital in deterring China, especially as the current Minuteman III system is 50 years old. The Minuteman III are a system designed to go

¹¹ "Institutional Compliance with Section 117 of the Higher Education Act of 1965." U.S. Department of Education Office of the General Counsel. October 2020. Accessed on May 20, 2021. <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>

¹² Letter on Biden Administration Regulatory Actions. American Council on Education. November 18, 2020. Accessed May 20, 2021. <https://www.acenet.edu/Documents/Letter-Biden-Administration-Regulatory-Actions-111820.pdf>

¹³ Supra Note 11.

against Soviet analog defenses and would probably not be effective in penetrating potentially advanced Chinese systems. Yet congressional Democrats have opposed funding for the Air Force's GBSD, with Rep. Ro Khanna, the author of the House-companion of the Endless Frontier Act, proposing scrapping its funding.¹⁴ In addition, the current text of the Endless Frontier Act does not provide any funding to DARPA, despite, as has been noted "most radical new technologies in recent decades have come from solutions-driven engineering work funded by agencies such as DARPA."¹⁵ Congress should redirect a portion of the bill's funding to defense priorities including the GBSD and DARPA.

For more information and conservative concerns about the U.S. Innovation and Competition Act please see the following resources:

- Walter Lohman. ["Senate Needs To Keep Its Eye on the China Challenge, Not Political Spending Priorities."](#) The Daily Signal.
- Yuval Levin. ["The Right Way to Supercharge American R&D."](#) The National Review.
- Derek Scissors. ["Protecting IP in the Endless Frontier Act."](#) American Enterprise Institute.

¹⁴ Joe Gould, Aaron Mehta. "Lawmakers, Defense Officials Joust over next-Gen ICBM Plans." Defense News. Last modified April 26, 2021. Accessed May 20, 2021. <https://www.defensenews.com/congress/2021/04/23/lawmakers-dod-officials-joust-over-next-gen-icbm-plans/>.

¹⁵ Windham, Patrick, Christopher T. Hill, and David Cheney. "Improving the Endless Frontier Act." Issues in Science and Technology, August 5, 2020. Accessed May 20, 2021. <https://issues.org/improving-the-endless-frontier-act/>.